

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4851 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MANGALDAS CHHANALALPATEL

Versus

LIQUIDATOR

Appearance:

MR MC BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 15/09/2000

ORAL JUDGEMENT

#. Heard Ms.Hemali Dave for Mr.M.C.Bhatt, learned
counsel appearing for the petitioner.

#. The petitioner has prayed for the appropriate, writ, order or direction for quashing and setting aside the orders which are at Annexures-D, E and F respectively.

#. Undisputedly, the jurisdiction of this court under Article 227 of the Constitution of India has been invoked by the petitioner, but it is rightly argued by Ms.Dave that, there is a scope to exercise the jurisdiction under Article 226 of the Constitution of India looking to the facts available on record.

#. It is contended that the petitioner was served with the notice alongwith the respondent nos.3 and 4 in the month of September, 1988 whereby they were directed to show cause as to why Rs.34,947=64 ps. with interest should not be recovered from the petitioner and the respondent nos.3 and 4 under section 110(h) of the Gujarat Co-operative Societies Act (hereinafter referred to as "the Act" for short). This notice was resisted by the petitioner by written reply and raised various factual and legal issues, even then, another notice dated 4/12.10.1988 was served. That notice was also resisted in writing and in response thereto, the petitioner was called to remain present on 27.10.1988. According to the petitioner as he was sick on the date of hearing, he could not remain present and the respondent No.1 ultimately passed the impugned order which is at Annexure-D dated 22.11.1988 whereby the petitioner was directed to pay Rs.11,629=21 ps. with interest and liquidation charges. The petitioner challenged that order before the revisional authority, namely, Additional Registrar, State of Gujarat. The Additional Registrar, State of Gujarat rejected the plea of the petitioner vide order Annexure-E dated 27.9.1990. The petitioner took the order of the Additional Registrar before the State Government invoking the revisional powers of the State Government, but again he failed as the Deputy Secretary, Agriculture, Co-operation and Rural Development Department, State of Gujarat refused to interfere with the previous above referred orders and rejected the revision application vide order dated 23.5.1991 which is at Annexure-F. The petitioner has, therefore, filed this petition invoking the jurisdiction under Articles 226 and 227 of the Constitution of India.

#. The orders under challenge are challenged on various grounds enumerated in the memo of the petition which are at pages 4, 5, 6 and 7 of the petition. While dealing with this petition, Ms.Dave initially argued the law point agitated by the petitioner in reference to the

scheme of the Act and especially the provisions of Section 110 read with section 93 of the Act. She has successfully pointed that at the relevant point of time the petitioner was not the office bearer. Nonavailability of the books of account was not because of his fault or negligence. At the relevant period, no cash money or property were under the entrustment of the petitioner. So, even on merits there was no reason for the officer to serve the show cause notice to the petitioner and the society has not suffered at all at the instance of the petitioner before the Board of Nominees.

#. It is also pointed out by Ms.Dave that, out of the total amount shown in the show cause notice by the Official Liquidator includes the amount of Rs.18291=18 ps allegedly lying with the Collector, Mahesana and Rs.1891=17 ps was pertained to the transaction with the Cooperative Society supplying the sugar, namely, Una Taluka Sahakari Khand Udhyog Mandli Limited.

#. After considering the dates reflected in the show cause notice at page 18, I am satisfied that the grievance agitated by the petitioner before the Official Liquidator was correct and the same was not considered in correct perspective.

#. It is clear that in view of the above set of facts or otherwise the Official Liquidator is not empowered to investigate the conduct of the members of officials of the Co-operative Society and hold them liable or accountable for any property of the society looking to the scheme of Sections 93 and 110(h) of the Act.

#. The reliance has been placed on the judgment in the case of Hiraben Shankerlal Patel Vs. State of Gujarat, reported in 1996(3) GCD, 849 wherein this court (Coram: N.N.Mathur,J) has held that, :

".....However, section 110 does not empower the liquidator to investigate the conduct of the Members of Officials past or present, holding him liable or accountable for any property of the society. If on inquiry under section 110(h), the liquidator finds ascertainable contribution, he may call upon the delinquent or his/her legal representative to pay the same, but if he finds that it requires detail investigation with respect to conduct of the person, he must submit report to the Registrar. If on perusal of the report, the Registrar is prima facie satisfied that liability has arisen against any person who

has taken any part in the organisation or management of the society and such a person is liable or accountable for any money or property of the society on account of misapplication or retention or on account of misfeasance or breach of trust in relation to the society, he has been guilty, the Registrar or person authorised by him may investigate the conduct of such persons. Misfeasance covers every misconducts which includes negligence as well, causing pecuniary loss to the society, so also breach of trust, resulting in a loss to the society. The loss to the society being in the nature of damages, computable in terms of money, resulting into an order of repayment or restoration of money or property with interest from a person, leads to serious consequences. Thus, the provision provides for framing of charge against the delinquent and giving him of reasonable opportunity of hearing. The mechanism, therefore, emerges from the reading of Section 93 and 110(h) that, in case of a society in liquidation or winding up, Registrar is vested with power to assess damages against delinquent, promoter etc. by way of summary enquiry which includes, a preliminary enquiry under section 110(h), satisfaction of the Registrar, notice, filing of written statement, framing of charges, recording of evidence and hearing of arguments.

In the instant case, considering the stand of the petitioner that the accident had taken place in which the machinery was damaged and further the fact that there is serious dispute with respect to the very existence of letter dated 22.8.1991, the demand of Rs.60,686/- with interest cannot be said to be ascertainable due. The matter therefore requires detailed investigation. In view of this, impugned order of liquidator dated 21.01.1992 without proper enquiry under section 93 is ex-facie illegal and deserves to be set aside."

##. Learned AGP Mr.Mankad who appears for the respondent No.2 has accepted that on the relevant date, reflected in the notice to show cause issued to the petitioner, he was not in possession of the record of the Society allegedly required in the proceedings in the court of Board of Nominees. Thus, the petitioner was not under the obligation for which he has been fastened with the liability. In response to the query raised by the court,

Mr.Mankad, learned AGP, has fairly submitted that the ratio of the above cited judgment by the learned counsel appearing for the petitioner would be applicable to the set of facts of this case and the impugned orders challenged by the petitioner can be quashed and set aside. So, on all counts and especially in view of the above set of facts, I am incline to allow this petition. Impugned orders Annexures-D, E and F dated 22.11.1988, 27.9.1990 and 23.5.1991 respectively are quashed and set aside. Show cause notice issued to the petitioner also therefore goes and became ineffective. Rule granted is hereby made absolute. Interim relief granted obviously become absolute as to the facts mentioned in the above referred show cause notice. The petitioner could have been awarded the costs of the litigation, but looking to the totality of the circumstances, I am not incline to award the costs, therefore, no costs.

(C.K.Buch,J)

(pathan)